TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 177.

HOSMER B. PARSONS, PLAINTIFF IN ERROR,

vs.

THE DISTRICT OF COLUMBIA AND JOHN W. ROSS, CHARLES F. POWELL, AND GEORGE TRUESDELL, COMMISSIONERS OF THE DISTRICT OF COLUMBIA.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED MAY 14, 1898.

(16,299.)

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INDEX.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 23, 1897.

In the Court of Appeals of the District of Columbia

HOSMER B. PARSONS, Appellant,
vs.
THE DISTRICT OF COLUMBIA and JOHN W. ROSS *et al.*, Commissioners, &c. } No. 539.

a Supreme Court of the District of Columbia.

HOSMER B. PARSONS, Petitioner,
vs.
THE DISTRICT OF COLUMBIA and JOHN W. Ross, Charles F. Powell, and George Truesdell, Commissioners of the District of Columbia, Respondents. } At Law. No. 38751. In Certiorari.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District*a*, at the times hereinafter mentioned the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Petition in Certiorari.*

Filed October 5, 1895.

In the Supreme Court of the District of Columbia.

HOSMER B. PARSONS, Petitioner,
vs.
THE DISTRICT OF COLUMBIA and JOHN W. Ross, Charles F. Powell, and George Truesdell, Commissioners of the District of Columbia, Respondents. } At Law. No. 38751. In Certiorari.

To the justice of said court, holding a special term at law:

1. The petition of Hosmer B. Parsons respectfully shows that he is the owner of a freehold estate in the following parcel of land, situated near the city of Washington and in the District of Columbia and described as follows:

A part of the three tracts of land known as Girl's Portion, Clonin Course, and Second Addition to Hargard, contained within the following metes and bounds:

Beginning at station No. 11 of a survey made by Charles J. Uhlman June 12, A. D. 1863, said station being on the east side of Rock creek, and running thence south 80¼° east 42 chains 55 links, thence north 57¾° east 18 chains 92 links to the Seventh-street turnpike road; thence south 2½° west 44 links; thence south 57¾° west 38 chains 14 links; thence south 75° west 28 chains 24 links to Rock creek; thence with the several windings of said creek the following courses and distances: North 49¾° west 7 chains 45 links; north 51½° west 1 chain 42 links; north 57° west 4 chains 17 links;
north 57½° west 6 chains; north 8¾° east 2 chains 24 links;
2 north 15½° west 3 chains 74 links; north 38° west 2 chains 70 links; north 45° east 3 chains 50 links; south 84° east 4 chains; south 51⅛° east 3 chains 64 links; north 76½° east 2 chains 34 links; north 49° east 4 chains 19 links; north 61½° east 1 chain 54 links; north 50° east 54 links; north 56½° east 1 chain 49 links; north 45° east 1 chain 65 links to the point of beginning, containing in all 87 acres and $\frac{43}{100}$ of an acre, more or less.

2. Against said parcel of land, unsufficiently described, there is borne upon the tax records in custody of the respondent a certain illegal charge, viz., the sum of $872.50, besides interest.

3. Said charge against said parcel of land is in the name of Hosmer B. Parsons; said charge purports to be a special assessment made by the Commissioners of the District of Columbia as a water-main tax or assessment for laying water main in the road or street on which the said parcel of land abuts, in accordance with the act of the Legislative Assembly of the District of Columbia approved June 23, 1873, and the acts of Congress approved respectively June 10, 1879, and June 17, 1890, and August 11, 1894.

Petitioner is uninformed and ignorant as to how much of said alleged work was done or what part of said assessment was made under each of said acts.

4. Your petitioner avers on information and belief that the record in the custody of the respondents shows the following defects and irregularities which invalidate said assessment:

1. That petitioner was not one of the property-owners who requested that the work and improvements for which said parcel of land is assessed be done and made, and that said charge was
3 made against property whose owner had not requested the doing of said work or the making of said improvements.

2. That the owner of the said parcel of land, meaning your petitioner, did not request the doing of the work or making of the improvements charged for, was not consulted as to their advisability, had and was given no opportunity to be heard upon the questions of cost or utility or benefit of the work or of the apportionment of the tax, and was not notified of the amount charged until after the work was concluded and after the said assessment had been made and had gone into effect as a lien upon said land, which was not a reasonable time.

3. Said assessment was not made and was not authenticated by any officer or person authorized to make or authenticate the same.

4. The assessment was made without any estimate of the cost of

the work to be done and without regard to the cost of the work or the value of the improvement, and not upon the basis of benefits to the property assessed, and said assessment is in excess of the cost of said work.

5. The assessment was made without authority of law, and the respondents had no jurisdiction or right to make the same.

6. The description of the parcel of land assessed is insufficient.

7. The said tax was not assessed within thirty days after the said water main had been laid and erected.

8. All of the said land assessed does not abut upon the street in which said water main was laid.

4 5. Said charge is unpaid, and respondents, the Commissioners of the District of Columbia, now threaten to sell and convey the said land of your petitioner in order to satisfy and pay said illegal charge, whereby the title to petitioner's land is clouded, he is injured, and has no appeal.

Wherefore petitioner prays that the United States writ of certiorari may issue, directed to each, the District of Columbia and to John W. Ross, Charles F. Powell, and George T. Truesdell, Commissioners of the District of Columbia, commanding them to certify immediately to this court a copy of each and every record and part of record in their custody relating in any manner to charges for water-main tax or for laying water main on Brightwood avenue, made in the name of Hosmer B. Parsons against the parcel of land particularly described on the first page of this petition and known on the water-tax records of the District of Columbia as "part plat 12, measuring on Brightwood avenue six hundred and ninety-eight front feet," said charge having been made by the Commissioners of the District of Columbia by virtue of supposed powers given to said Commissioners by the acts of Congress approved respectively June 10th, 1879, June 17th, 1890, and August 11, 1894, and by the act of the Legislative Assembly of the District of Columbia approved June 23, 1873, or by one or more of said acts, including all statements of costs, measurements, notice to proprietor or proprietors of land, and proof of manner of service of such notice.

And that upon the coming in of such return of the respondents the said charge herein complained of may be quashed and annulled by this court and the respondents ordered to cancel it on the records in their custody.

H. B. PARSONS.

A. A. & T. W. BIRNEY,
Attorneys for Petitioner.

5 DISTRICT OF COLUMBIA:

I, Hosmer B. Parsons, on oath say that I am the petitioner in the foregoing complaint signed by me; that I know the contents of said petition; that the statements therein made of my own knowledge are true, and those made on information and belief I believe to be true.

H. B. PARSONS.

Subscribed and sworn to before me this 3rd day of October, 1895.

A. W. ZIMMERMANN,
[SEAL.] *Notary Public for Kings County.*

Certificate filed in N. Y. county.

OCTOBER 5TH, 1895.

Let the writs issue as prayed.

A. C. BRADLEY, *Justice.*

Records returned by respondents in response to writ of certiorari, as per stipulation of counsel hereto annexed.

FEB'Y 8, 1894.

Respectfully referred to the chief of the fire department, with request that he will kindly state whether in his opinion this main is necessary for the public safety.

GEO. McC. DERBY,
Capt. of Engr.

FIRE DEPARTMENT, *February* 9, 1894.

Respectfully returned to the Hon. Commissioners, with the recommendation that the within-described water main be laid, as I consider it necessary for the public safety.

JOSEPH PARRIS,
Chief Engineer.

6 (Engineer department, vol. —), 189–.

FEBRUARY 12, 1894.

Respectfully forwarded to the Engineer Commissioner D. C., with recommendation that a water main be laid on 7th St. from Military road to the Piney Branch road, thence on Piney Branch road to Vermillion street, Takoma Park, and thence on Vermillion street to Carroll street; estimated cost, $9,547.50.

G. McC. DERBY,
Capt. of Engineers, U. S. A.

FEBRUARY 13, 1894.

Approved; the main to be locafed in present roads and streets so that it will lie in the proper position, just as near as practicable, when the roads & streets are changed to conform to the present highway-extension plans, to aid in which a copy of the maps of such plans, covering doubtful locations, should be obtained before opening trench for the main.

CHAS. F. POWELL.

Ordered by Board Commissioners D. C. Feb'y 14, 1894.

JOHN WALKER,
Chief Clerk

E. D.

MARCH 9, 1894.

Respectfully forwarded to the Engineer Commissioner D. C., with the recommendation that the 12th supply main for Takoma
7 be laid on Brightwood avenue, from the Piney Branch road to Aspen street, instead of on the Piney Branch road from Brightwood avenue to Vermillion street, as heretofore ordered est. cost, $8,648.00.

G. McC. DERBY,
Capt. of Engineers, U. S. A.

Approved March 10, 1894.

CHAS. F. POWELL,
Corps of Engineers, U. S. A., Commissioners D. C.

Ordered by Board of Commissioners D. C.
March 10th, 1894.

JOHN WALKER,
Chief Clerk.

E. D.

Recommendation.

No. 10082, W. D., 189–.

District of Columbia, office of the Engineer Commissioner, water department.

Water rates, water distribution, pumps, and wells. Capt. Edward Burr, assistant to Engineer Commissioner.

WASHINGTON, *March* 17, 1895.

Captain G. McC. Derby, U. S. Army, Ass't to Engineer Comm'r D. C.

8 CAPTAIN: In reference to communication 10082 W. D., 1894, I have the honor to recommend the laying of a 12″ water main on the east side of Brightwood avenue south from Shepherd road to Flint street, in Brightwood Park; this will be a continuation of the 12″ main already ordered for Brightwood Ave. as far south as Shepherd's road; also a six (6) inch main in center of Flint St. east from Brightwood avenue to 9th St. and a six inch (6) main in center of 9th south to Desmoines St.; total cost of 12″ main, 1,260′ @ 1.50, $1,890.00, and 1,380′ of 6″ @ 90 cts., $1,242.00; total cost of mains, $3,132.00.

Four (4) fire hydrants, @ $85.00, $340.00; total cost, $3,472.00. Assessment will cover cost of laying main.

Respectfully,

J. S. GARLAND.

Approved.

H. F. HAYDEN, *Sup't.*

Report of H. F. Hayden.

No. —, W. D., 189–.

District of Columbia, office of the Engineer Commissioner, water department.

Water rates, water distribution, pumps, and wells. Capt. Edward Burr, assistant to Engineer Commissioner.

WASHINGTON, *July 25th*, 1895.

Mr. Jno. J. Beall, water registrar, D. C.

SIR: You are respectfully notified that the following water mains have been laid, viz:

9 1,448½ feet 12″ on the east side of Brightwood avenue from Military road to Flint Sts., Brightwood, D. C.

5,699 ft. 12″ on Brightwood avenue from Military road to Aspen street, Brightwood.

Fire hydrants erected, completed July 20, '95.

1,435½ feet 6″ on Flint street from Brightwood avenue to 9th street, and on 9th St. from Flint to Desmoines, Brightwood Park.

1,517¼ ft. 6″ on Desmoines St. from 9th to end of property line east, Brightwood Park.

Five hydrants erected, completed July 20, '95.

Files 9957, W. O., 10183, 10082, & 10062, and all papers pertaining thereto, are herewith transmitted.

Very respectfully,

H. F. HAYDEN,
Sup't Water Dep't.

Endorsement: July 26, 1895. Referred to Mr. Cross for assessment. Jno. J. Beall, W. R.

10 *Water-main Assessment.*

Ave.

List of property fronting on Brightwood street between Military road and Aspen streets. File No. 9957.

Square.	Lot.	Front ft.	Owners.	Amount represented in petition.	Am't not represented in petition.	Amount previously assessed.	Remarks.
	Part.	698	Hosmer B. Parsons.	.....	872 50	.....	17–468

Endorsement.

Mr. Cross:

An assessment on the within-described property for a water main

is levied to take effect August 10, 1895. Please make notices in accordance with that date.

JNO. J. BEALL,
Water Registrar.

August 7, 1895.

11 *The Assessment by John J. Beall, 2c.*

No. —, W. D., 189–.

District of Columbia, office of the Engineer Commissioner, water department.

Water rates, water distribution, pumps, and wells.

WASHINGTON, *August 10th*, 1895.

Captain Edward Burr, assistant to Engineer Commissioner:

An assessment of one dollar and twenty-five cents (1.25) per linear foot is levied this day on the following property: For water mains laid on Brightwood avenue bet. Military road and Aspen street, Flint street between Brightwood avenue and 9 street, 9th street between Desmoines and Flint streets, Brightwood avenue between Military road and Flint street, Desmoines street between 9th street and end of property line east.

JNO. J. BEALL,
Water Registrar.

Water-main Assessment.

Brightwood avenue bet. Military road and Aspen street.

Square.	Lot.	Names.	Amount.
	Part.....	Hosmer B. Parsons.....	$872 50

12 *Notice of Assessment.*

Form No. 1.

Return this notice to water department and get tax bill to be paid to the collector of taxes of the District of Columbia.

Engineer department, water office, District of Columbia.

No. —.

WASHINGTON, *August 10th*, 1895.

Mr. Hosmer B. Parsons:

You are hereby notified that in accordance with the acts approved June 23, 1873, June 10, 1879, June 17, 1890, and August 11, 1894,

a water main was laid on Brightwood avenue *street* between Military road and Aspen street on July 20th, 1895, and that water-main tax has been assessed upon the following property, being part —, for description see attached sheets, square plat 12, measuring on Brightwood Ave. six hundred and ninety-eight (698) front feet, at one dollar and twenty-five cents per linear foot.

Payment of this tax can be made in four equal annual instalments, the first of which is payable on or before the 10th day of Sept., 1895, without interest, and the remaining instalments on the 10th day of Aug. in each succeeding year, with interest at ten per cent. per annum from August 10th, 1895.

If the first instalment of the above be not paid within the time specified the property will be advertised and sold by the collector of taxes at the succeeding tax sale.

The whole amount of said tax may be paid in full on or before the 10th day of September, 1895, in which case an abatement
13 of six per cent. will be made.

Total tax	$872 50
Discount	52 35
Amount required	$820 15

JNO. J. BEALL,
Water Registrar.

Recorded in Ledger, vol. 17, folio —.
Delivered by mail August 24th, 1895.

By J. B. FITZHUGH, *Inspector.*

Envelope.

OFFICE OF THE
ENGINEER COMMISSIONER,
WASHINGTON, D. C.

WATER DEPARTMENT.

Commissioners of the District of Columbia.

OFFICIAL BUSINESS.

Any person using this envelope to avoid the payment of postage on private matter of any kind will be subject to a fine of $300.

A. M. BLISS, Esq.,
Overlook Inn, D. C.

* * * * * * *

14 *Return of Service of Notice.*

Office of the Commissioners District of Columbia, water department.

Return of Service of Notice.

I hereby certify that the annexed notice is a copy of the original notice of assessment against part —, assessed in the name of Hosmer B. Parsons, for laying water main on Brightwood avenue between Military road and Aspen streets, plat 12, for description see at-

tached sheet, and that said original notice was served by me on the day of 24th August, 1895, in the following manner, by mail, addressed to A. M. Bliss, Esq., Overlook inn, D. C., ag't for Hosmer B. Parsons, by placing notice in a penalty envelope securely sealed and addressed as above, a copy of which envelope is attached hereto.

J. B. FITZHUGH, *Inspector.*

Sworn to and subscribed before me this 12th day of September, 1895.

GORDON W. GROW,
Notary Public. [SEAL.]

15 *Affidavit of John B. Fitzhugh.*

Filed January 4, 1896.

In the Supreme Court of the District of Columbia.

HOSMER B. PARSONS
vs.
THE DISTRICT OF COLUMBIA. } At Law. No. 38751.

DISTRICT OF COLUMBIA, *To wit:*

Before me personally appeared John B. Fitzhugh, who, being by me first duly sworn according to law, deposed and said that affiant is informed and believes that the A. M. Bliss to whom the original notice of assessment was sent, as set forth in the affidavit of your affiant of the 12th Sept., 1895, and filed in this cause, with the return of the respondent, was at the time of the mailing and service as therein stated of said notice the agent of the property described in said notice, chargeable with the water-main assessment sought by petition in his writ filed in this cause to be quashed.

JOHN B. FITZHUGH.

Subscribed and sworn to before me this 3rd day of January, A. D. 1896.

MASON N. RICHARDSON,
Notary Public. [SEAL.]

16 *Motion for Judgment.*

Filed November 25, 1895.

In the Supreme Court of the District of Columbia.

HOSMER B. PARSONS, Petitioner,
vs.
THE DISTRICT OF COLUMBIA *et al.* } Law. No. 38751.

Now comes the petitioner and moves the court for judgment upon the return of the respondents.

A. A. & T. W. BIRNEY,
Attorneys for Petitioner.

Mr. S. T. Thomas and Mr. A. B. Duvall, attorneys for respondents:

Take notice that we have filed in the above named and numbered case a motion, of which the foregoing is a copy, and that on Saturday, November 30th, 1895, at ten o'clock a. m., or as soon thereafter as counsel can be heard, we will call the same to the attention of the court before Justice Bradley, circuit court No. 1.

A. A. & T. W. BIRNEY,
Attorneys for Petitioner.

Due and legal service of the foregoing motion and notice is hereby acknowledged and copy received.

S. T. THOMAS,
Attorneys for Respondents.

17 MONDAY, *January 6th*, 1896.

Session resumed pursuant to adjournment, Mr. Justice Bradley presiding.

* * * * * * *

HOSMER B. PARSONS, Petitioner, *v.* THE DISTRICT OF COLUMBIA and JOHN W. Ross, Charles F. Powell, and George Truesdell, Commissioners of the District of Columbia, Respondents.	At Law. No. 38751. In Certiorari.

This case coming on to be heard upon the petitioner's motion for judgment upon the return of respondents to the writ of certiorari issued in this case, and the same being heard, it is considered that said motion be, and it is hereby, overruled, and the petition herein be, and it is hereby, dismissed at petitioner's costs.

Order for Appeal.

Filed January 6, 1896.

In the Supreme Court of the District of Columbia, the 6th Day of January, 1896.

HOSMER B. PARSONS *vs.* THE DISTRICT OF COLUMBIA and JOHN W. Ross, Charles F. Powell, and George Truesdell, Commissioners of the District of Columbia.	Certiorari. At Law. No. 38751.

The clerk of said court will please enter an appeal to the Court of Appeals from the judgment in this case and issue citation.

A. A. & T. W. BIRNEY,
Attorneys for Parsons, Petitioner.

18 In the Supreme Court of the District of Columbia.

HOSMER B. PARSONS
vs.
THE DISTRICT OF COLUMBIA and JOHN W. Ross, Charles F. Powell, and George Truesdell, Commissioners of the District of Columbia. } At Law. No. 38751.

The President of the United States to The District of Columbia and John W. Ross, Charles F. Powell, and George Truesdell, Commissioners of the District of Columbia, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal filed in the supreme court of the District of Columbia on the 6th day of January, 1896, wherein Hosmer B. Parsons is appellant and you are appellees, to show cause, if any there be, why the judgment—decree—rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 6th day of January, in the year of our Lord one thousand eight hundred and ninety-six.

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 20 day of January, 1896.

S. T. THOMAS,
Attorney for Appellees.

19 *Memorandum.*

1896, Jan. 11.—Bond for appeal filed.

Stipulation.

Filed January 23, 1896.

In the Supreme Court of the District of Columbia.

HOSMER B. PARSONS
vs.
THE DISTRICT OF COLUMBIA *et al.* } Law. No. 38751.

It is stipulated and agreed between counsel in this case that the following parts of the record shall constitute the transcript of record on appeal:

1. The petition in full.

The following parts of those records of the District of Columbia returned by the respondents in response to the writ of certiorari, viz:

2. The recommendation of G. McC. Derby, of date February 12, 1894, with the entries following said recommendation.

3. The recommendation, with heading, — J. S. Garland, of date March 17, 1895, but omitting the tracing accompanying same.

4. The report of H. F. Hayden, sup't of water department, of date July 25, 1895, with heading thereto.

5. The heading and all entries on the sheet headed "Water-main assessment," in their order.

6. The assessment by John J. Beall, water registrar, of date August 10, 1895, with its heading, and also the entry on attached sheet.

20 7. The notice of assessment, dated August 10, 1895, addressed to Hosmer B. Parsons, with the affidavit and copy of envelope attached thereto, and omitting the attached description of land, which description is hereby admitted to be in the same terms as that contained in the petition in certiorari.

8. The affidavit of John B. Fitzhugh, filed as an amendment to the return of the respondents.

9. The motion for judgment.

10. The judgment of the court.

11. The entries showing appeal from judgment, approval of appeal bond, citation to Court of Appeals, and acknowledgement of service.

A. A. & T. W. BIRNEY,
Attorneys for Petitioner.
S. T. THOMAS,
Attorney for Respondent.

January 22nd, 1896.

21 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify the foregoing pages, numbered from 1 to 20, inclusive, to be true copies of originals in cause No. 38751, at law, wherein Hosmer B. Parsons is plaintiff and The District of Columbia and John W. Ross, Charles F. Powell, and George Truesdell, Commissioners of the District of Columbia, are defendants, as the same remain upon the files and records of said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 5th day of February, A. D. 1896.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 539. Hosmer B. Parsons, appellant, *vs.* The District of Columbia and John W. Ross *et al.*, Commissioners, &c. Court of Appeals, District of Columbia. Filed Feb. 10, 1896. Robert Willett, clerk.

13 In the Court of Appeals of the District of Columbia.

HOSMER B. PARSONS
vs.
DISTRICT OF COLUMBIA *et al.* } No. 539. January Term, 1896.

It is stipulated and agreed that "Shepherd's road" and "Military road," referred to in the records, are, for the purposes of this case, one and the same. This stipulation shall be filed as part of the original stipulation between counsel, and it shall be added to the transcript of record and considered and used in all respects as part of the same.

A. A. & T. W. BIRNEY,
Attorneys for Appellant.
S. T. THOMAS,
Attorney for Appellees.

[Endorsed:] No. 539. Court of Appeals, January term, 1896. Addition to record per stipulation of counsel. Court of Appeals, District of Columbia. Filed Feb. 21, 1896. Robert Willett, clerk.

14 THURSDAY, *April 7th, A. D.* 1896.

HOSMER B. PARSONS, Appellant,
vs.
THE DISTRICT OF COLUMBIA and JOHN W. ROSS, CHARLES F. POWELL, and GEORGE TRUESDELL, Commissioners of the District of Columbia. } No. 539.

The above-entitled cause was argued by Mr. T. W. Birney, attorney for the appellant, and was submitted on the record and printed briefs by Messrs. S. T. Thomas and A. B. Duvall, attorneys for the appellees.

15 HOSMER B. PARSONS, Appellant,
vs.
THE DISTRICT OF COLUMBIA and JOHN W. ROSS, CHARLES F. POWELL, and GEORGE TRUESDELL, Commissioners of the District of Columbia. } No. 539.

Opinion.

Mr. Justice MORRIS delivered the opinion of the court:

Upon a writ of certiorari issued from the supreme court of the District of Columbia to the Commissioners of the District, in pursuance of a petition therefor filed by the appellant in that court for the purpose of having an assessment vacated that had been made against his property on account of the laying of a water main in front of said property, and upon a return made to such writ by the Commissioners, there was a judgment rendered dismissing the petition; and from that judgment the present appeal has been prosecuted.

The assignments of error raise three questions: 1st, whether the

act of the Legislative Assembly of the District of Columbia, approved June 23, 1873, in reference to the construction of water mains in the District of Columbia, and providing the mode of assessment therefor, and also the act of Congress of August 11, 1894 (28 Stat., 275), "to regulate water-main assessments in the District of Columbia," are constitutional and valid enactments; 2d, whether in the assessment there was a sufficient description of the appellant's property; 3d, whether there was sufficient notice of the assessment given to the appellant.

The second and third questions were withdrawn and abandoned at the argument by the counsel for the appellant; and the first question was fully considered and answered in the affirmative by this court in the case of Burgdorf *v.* District of Columbia, 23 Wash. Law Rep. 354, decided by us on June 4, 1895. It is true that the act of Congress of August 11, 1894, was not involved in that case; and that the legislation there considered was mainly the act referred to of the Legislative Assembly of the District of June 23, 1873, together with the acts of Congress of June 10, 1879, and June 17, 1890. But the act of August 11, 1894, so far as it is applicable here, makes no change in the pre-existing legislation further than to provide for a rate of assessment for the laying of water mains of one dollar and twenty-five cents per linear front foot against abutting land, instead of one cent and one-quarter of a cent per square foot of such abutting property, as provided in the act of the Legislative Assembly. But by this change no different question is presented from that which was considered in the case of Burgdorf *v.* District; and this is conceded by counsel for the appellant, whose sole reliance in bringing the case here apparently is the possible expectation that we might modify our opinion and determination as stated in our former decision. We see no reason to modify that decision in any respect.

It only remains, therefore, that we should affirm the judgment of the supreme court of the District of Columbia, with costs, which we accordingly do. And it is so ordered.

16 THURSDAY, *April 16th, A. D.* 1896.

HOSMER B. PARSONS, Appellant, *vs.* THE DISTRICT OF COLUMBIA and JOHN W. Ross, Charles F. Powell, and George Truesdell, Commissioners of the District of Columbia.		No. 539. April Term, 1896.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said supreme court in this cause be, and the same is hereby, affirmed with costs.

Per MR. JUSTICE MORRIS.

April 16, 1896.

17 MONDAY, *April 20th, A. D.* 1896.

HOSMER B. PARSONS, Appellant,
vs.
THE DISTRICT OF COLUMBIA and JOHN W. ROSS, CHARLES F. POWELL, and GEORGE TRUESDELL, Commissioners of the District of Columbia. } No. 539.

Upon motion of Mr. A. A. Birney, attorney for the appellant in the above-entitled cause, it is ordered by the court that a writ of error to remove said cause to the Supreme Court of the United States be, and the same is hereby, allowed on giving bond in the sum of three hundred dollars.

18 Know all men by these presents that we, Hosmer B. Parsons, as principal, and Charles J. Bell and Frank L. Browne, as sureties, are held and firmly bound unto The District of Columbia and John W. Ross, Charles F. Powell, and George Truesdell, Commissioners of the District of Columbia, in the full and just sum of three hundred dollars, to be paid to the said The District of Columbia and John W. Ross, Charles F. Powell, and George Truesdell, Commissioners of the District of Columbia, its and their certain attorney, executors, administrators, assigns, or successors; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 30th day of April, in the year of our Lord one thousand eight hundred and ninety-six.

Whereas lately, at a Court of Appeals of the District of Columbia, in a suit depending in said court between said Hosmer B. Parsons and said The District of Columbia and John W. Ross, Charles F. Powell, and George Truesdell, Commissioners of the District of Columbia, a judgment was rendered against the said Hosmer B. Parsons, and the said Hosmer B. Parsons having obtained a writ of error to the Supreme Court of the United States and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said The District of Columbia and John W. Ross, Charles F. Powell, and George Truesdell, Commissioners of the District of Columbia, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, within 30 days from the date thereof:

Now the condition of the above obligation is such that if the said Hosmer B. Parsons shall prosecute his said writ of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

HOSMER B. PARSONS. [SEAL.]
CHARLES J. BELL. [SEAL.]
F. L. BROWNE. [SEAL.]

Sealed and delivered in the presence of—

——— ———.

Approved by—
R. H. ALVEY, *Chief Justice.*

[Endorsed:] No. 539. Hosmer B. Parsons, appellant, *vs.* The District of Columbia *et al.* Bond on appeal to Supreme Court U. S. Court of Appeals, District of Columbia. Filed May 5, 1896. Robert Willett, clerk.

19 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the Court of Appeals of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals, before you or some of you, between Hosmer B. Parsons, appellant, and The District of Columbia and John W. Ross, Charles F. Powell, and George Truesdell, Commissioners of the District of Columbia, appellees, a manifest error hath happened, to the great damage of the said appellant, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal Court of Appeals, District of Columbia.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 5th day of May, in the year of our Lord one thousand eight hundred and ninety-six.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

20 UNITED STATES OF AMERICA, *ss:*

To the District of Columbia and John W. Ross, Charles F. Powell, and George Truesdell, Commissioners of the District of Columbia, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein Hosmer B. Parsons is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Richard H. Alvey, Chief Justice of the

Court of Appeals of the District of Columbia, this 5th day of May, in the year of our Lord one thousand eight hundred and ninety-six.

R. H. ALVEY,
Chief Justice of the Court of Appeals of the District of Columbia.

Service of above citation acknowledged this 5th day of May, 1896.

S. T. THOMAS,
Att'y for Appellees.

[Endorsed:] Court of Appeals, District of Columbia. Filed May 5, 1896. Robert Willett, clerk.

21 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 20, inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Hosmer B. Parsons, appellant, *vs.* The District of Columbia and John W. Ross, Charles F. Powell, and George Truesdell, Commissioners of the District of Columbia, No. 539, April term, 1896, as the same remain upon the files and records of said Court of Appeals.

Seal Court of Appeals, District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 8th day of May, A. D. 1896.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: Case No. 16,299. District of Columbia Court of Appeals. Term No., 177. Hosmer B. Parsons, plaintiff in error, *vs.* The District of Columbia and John W. Ross, Charles F. Powell, and George Truesdell, Commissioners of the District of Columbia. Filed May 14, 1896.

No. 177.

Brief of Thomas & Duvall for D.C.

Filed Nov. 9, 1897.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1897.

NO. 177.

HOSMER B. PARSONS, PLAINTIFF IN ERROR,

vs.

THE DISTRICT OF COLUMBIA AND JOHN W. ROSS, CHARLES F. POWELL AND GEORGE TRUESDELL, COMMISSIONERS OF THE DISTRICT OF COLUMBIA.

S. T. THOMAS,
A. B. DUVALL.
Attorneys for Defendants in Error.

HARTMAN & CADICK, PRS.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1897.

NO 177

HOSMER B. PARSONS, PLAINTIFF IN ERROR,

vs.

THE DISTRICT OF COLUMBIA AND JOHN W. ROSS, CHARLES F. POWELL AND GEORGE TRUESDELL, COMMISSIONERS OF THE DISTRICT OF COLUMBIA.

And now come the defendants in error, by their attorneys, and move the court to dismiss the writ of error in this cause for want of jurisdiction to entertain the same, the sum or value of the matter in dispute being less than $5,000, and the judgment of the court below not involving the validity of a statute of or an authority exercised under the United States.

S. T. THOMAS,
A. B. DUVALL.
Attorneys for Defendants in Error.

kins, 130 U. S., 210, and District *vs.* Gannon, Ibid., 227; Linford *vs.* Ellison, 155 U. S., 503.

It is respectfully submitted that this court is without jurisdiction and that the writ of error in this case should be dismissed.

S. T. THOMAS,
A. B. DUVALL.
Attorneys for Defendants in Error.

No. 177.

Brief of Birney for P. E. (on mo.)

Filed Nov. 20, 1897.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 177.

HOSMER B. PARSONS, PLAINTIFF IN ERROR,

vs.

THE DISTRICT OF COLUMBIA ET AL.

Brief for Plaintiff in Error in Opposition to Motion to Dismiss.

ARTHUR A. BIRNEY,
Attorney for Plaintiff in Error.

LAW REPORTER PRINT.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 177.

HOSMER B. PARSONS, PLAINTIFF IN ERROR,

vs.

THE DISTRICT OF COLUMBIA ET AL.

Brief for Plaintiff in Error in Opposition to Motion to Dismiss.

This court has jurisdiction. The statement in the brief of counsel for defendant in error that "the plaintiff does not contend that any of the acts of Congress in question are invalid," is wholly without warrant. The assignment of errors made in this court in the brief on file should be enough to dispose of this assertion, and a glance at that brief will show that the only argument made is that the statutes under which the Commissioners acted were void. They acted, in making the assessment, not only under the act of the late Legislative Assembly of the District of Columbia passed under the authority of Congress (see Sections 199, 200, 201, 202, 203 and 204, Rev. St. D. C.), but also under the acts of Congress amendatory and adoptive of that act, and *all these acts* are open to the same criticism, that of failing to provide for notice to the land owner whose property is to be burdened.

Again, we submit that by the amendatory acts adopting

the provisions of this act of the Legislative Assembly as a part of the system of assessment law, it became a statute of the United States.

And if all this were not enough, the Commissioners of the District of Columbia in imposing the assessment in question were acting under color of the authority of the United States, and this suit attacks the validity of such authority.

This is clear when it is considered that the assessment in question was levied by the linear foot, and the only authority for such method is found in the Act of Congress of August 11, 1894, while the only authority in the Commissioners to assess in any way is given by the Act of Congress of June 10, 1879. The assignment of errors attacks these acts as *unconstitutional.* No question of *construction* has ever been suggested or argued.

That this is true, will appear from the statement of the Court of Appeals (Rec. 14) that the only question argued to them was whether the statutes in question "are constitutional and valid enactments."

Applying the rule stated by this court that—

> "whenever the power to enact a statute as it is by its terms, or is made to read by construction, is fairly open to denial, and is denied, the validity of such statute is drawn in question" (RR. Co. *vs.* Hopkins, 130 U. S. 210)—

it is submitted that the most casual inspection of the case as shown by the Record, and the brief already on file, will make it clear that the motion to dismiss is without merit.

ARTHUR A. BIRNEY,
Attorney for Plaintiff in Error.

In the Supreme Court of the United States

OCTOBER TERM, 1897.

No. 177.

HOSMER B. PARSONS, PLAINTIFF IN ERROR,

vs.

THE DISTRICT OF COLUMBIA ET AL.

BRIEF FOR PLAINTIFF IN ERROR.

ARTHUR A. BIRNEY,
Attorney for Plaintiff in Error.

LAW REPORTER PRINT.

In the Supreme Court of the United States

OCTOBER TERM, 1897.

No. 177.

HOSMER B. PARSONS, PLAINTIFF IN ERROR,

vs.

THE DISTRICT OF COLUMBIA ET AL.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF FACTS.

Mr. Parsons owns a considerable tract of unimproved land upon Brightwood avenue, in the District of Columbia. It is without the city limits, and is of irregular shape. In August, 1895, the Commissioners of the District of Columbia caused to be laid on said Brightwood avenue, from Military road to Aspen street and to Flint street a 12-inch water main, and assessed Parsons' land therefor at the rate of $1.25 for each linear foot abutting on one side of said avenue, or $372.50 in all. The land abutting on the opposite side of the avenue was also assessed at the same rate, making a total assessment of $2.50 per foot.

The total cost of this main to the District of Columbia, as shown by the report of the Engineer Commissioner (Rec. 5), was $1.50 per foot, making a profit of $1.00 per foot for the District. As there were (Rec. 6), in all, 7,147 feet of 12-inch main laid at this one time, the District made $7,147 thereon. The same report shows that the total cost of the 6-inch main contemplated would be 90 cents per foot (Rec. 5), and the

assessment for this (Rec. 7) was made at the same rate of $2.50 per foot for both sides of the street, making a profit of $1.60 per foot, or $4,724.40 for the total length (2,952½ feet) of 6-inch main laid at that time and place. So that the District of Columbia is to take as profit from the pockets of the taxpayers, on this single transaction, the respectable sum of $11,871.40 over and above all expenses.

Having laid the main, the respondents proceeded, on August 10, 1895, to make an assessment therefor, and produced the document found on page 7 of the Record, wherein Mr. Parsons' land is described as lot "part," and is called on by that name to pay $872.50.

Respondents then caused a notice of assessment, in Mr. Parsons' name, to be mailed to A. M. Bliss, Esq., Overlook Inn, D. C.

This notice was in substance only a demand for payment, and was the *only notice given him at any time.*

Plaintiff in error filed his petition *in certiorari* to quash the above-described assessment against his land upon the grounds stated therein. The lower court refused to annul the assessments, and dismissed the petition.

THE STATUTES.

Sec. 204, Rev. Stat. D. C., provides—

> "On petition of the owners of the majority of real estate on any square or line of squares in the city of Washington, water pipes may be laid and fire plugs and hydrants erected whenever the same may be requisite and necessary for public convenience, security from fire, or for health."

The Act of the Legislative Assembly of June 23, 1873, declares:

> "Sec. 6. That hereafter, in order to defray the expense of laying water mains and the erection of fire

plugs, there be and is hereby levied a special tax of one and a quarter cents per square foot on every lot and part of lot which binds in or touches on any avenue, street or alley in which a main water pipe may hereafter be laid and fire plugs erected, which tax shall be assessed by the Water Registrar within thirty days after such water mains and fire plugs shall have been laid and erected, of which assessments the Water Registrar shall immediately notify the owner or agent of the property chargeable therewith, setting forth in said notice the number of the square in which is situated the property on which said tax is assessed, and the street, avenue or alley on which it fronts; and the said tax shall be due and payable in four equal instalments, the first of which shall be payable within thirty days from the date of the notice," etc.

By Act of Congress of June 17, 1890, it was provided that—

> "The Commissioners shall have the power to lay water mains and water pipes and erect fire plugs and hydrants whenever the same shall be, in their judgment, necessary for the public safety, comfort or health."

By Act of Congress of August 11, 1894, it was enacted that assessments for water mains should thereafter be at the rate of one dollar and twenty-five cents per linear front foot against all lots or land abutting upon the street, road or alley in which a water main should be laid.

ASSIGNMENTS OF ERROR.

We submit that the court erred—

1. In holding the Act of the Legislature of June 23, 1873, and the Act of Congress of August 11th, 1894, to be constitutional and valid.

2. In holding that the petitioner was not entitled under the Constitution to notice of the charge against him before it became a lien upon his land.

3. In holding that the petitioner was not entitled under the Constitution to an opportunity to be heard as to the cost, utility, and benefit to him of the proposed work, and as to the apportionment of the assessment therefor before said assessment was finally made.

4. In holding that the charge against petitioner's land of a sum in excess of the cost of the work was not in violation of his constitutional rights.

ARGUMENT.

The Act of the Legislative Assembly of 1873, with its amendments by Congress, and the Act of Congress of August, 1894, are in violation of those parts of the Fifth Amendment to the Constitution of the United States which declare that no person shall be deprived of property without due process of law, nor shall private property be taken for public use without just compensation, because:—

a. They do not provide for notice to the owner of land to be assessed, nor give him any opportunity to be heard as to the advisability of the improvements to be made, or to the cost of the same, or the benefit to his land, or the apportionment of the tax, nor do the acts provide for an appeal from, or review of, the assessment in any manner.

b. The assessment called for by the acts is not based on benefits to the property assessed, but it is to be made without regard to benefits.

c. The assessment is not based upon the cost or even the character of the work, but is to be the same, regardless of cost, of material or size of main.

d. The law upon which the assessment rests provides for the levy on private property of a tax, part of which is to be devoted to public use.

I.

The Want of Provision for Notice.

In any case where proceedings are to be had for the taking of property, or to impose a burden upon it, the *statute itself* must provide for notice to the property owner; otherwise it is unconstitutional.

> Ulman *vs.* Mayor, &c., 72 Md. 587, affirmed in this court. See 165 U. S. 587.
>
> Garvin *vs.* Daussman, 114 Ind. 429.

Lewis, on Eminent Domain, says (Sec. 368):

> "There is really but one logical and consistent position in the matter, and that is that a statute which does not provide for notice is invalid."

And in Welty, on Assessments (pp. 286–408), we find:

> "If the law makes no provision for a hearing of objections to the assessment, it is within the rule which prohibits the taking of property without compensation, and is in direct conflict with the 14th Amendment of the Constitution."

To precisely the same effect is Gatch *vs.* Des Moines (Ia.), 18 N. W. Rep. 310.

The necessity of notice to the property owner in a proceeding like this would seem to have been settled in the District of Columbia, by the case of Allman *vs.* D. C., where, in construing a special assessment law, the court said:

> "The fatal defect in the act and the proceedings thereunder is the failure to provide for notice to the owners of property, *and an opportunity to them to be heard* before the final settlement of the charge and the lien therefor upon their property. A proceeding which fastens a lien upon property for which it may be summarily sold without notice and an opportunity given to the owner to be heard as regards its validity

> and fairness is not 'due process of law;' and this notice must be given at some serviceable stage of the proceedings."
>
> Allman *vs.* D. C., 3 App. Cas. (D. C.) 8, and cases cited.

The requirement of a provision in the statute for notice before a special assessment may become fixed or effectual has repeatedly been declared by this court. In Davidson *vs.* New Orleans, 96 U. S. 97, where an assessment for draining swamps was in question, the court laid down the proposition—

> "that whenever by the laws of a State, or by State authority, a tax, assessment, servitude, or other burden is imposed upon property for the public use, whether it be for the whole State or of some more limited portion of the community, *and those laws provide for a mode of confirming or contesting the charge thus imposed*, in the ordinary courts of justice, *with such notice to the person*, or such proceeding in regard to the property as is appropriate to the nature of the case, the judgment cannot be said to deprive the owner of his property without due process of law."

To the same effect are:

> Hagar *vs.* Reclamation Dist., 111 U. S. 701.
>
> Spencer *vs.* Merchant, 125 U. S. 345.
>
> Palmer *vs.* McMahon, 133 U. S. 660.
>
> Paulson *vs.* City of Portland, 149 U. S. 30.
>
> Street Extension Cases, Wash. Law Reporter of June 10, 1897, p. 372.

Other authorities have used even more vigorous language in upholding the citizen's right to notice.

In the well known and widely approved case of Stuart *vs.* Palmer, 74 N. Y. 189, the court said:

> "The legislature can no more arbitrarily impose an assessment for which property may be taken and

> sold than it can render judgment against a person without a hearing. It is a rule founded on the first principles of natural justice—older than written constitutions—that a citizen shall not be deprived of life, liberty, or property without an opportunity to be heard in defense of his rights."

And again:

> "I am of opinion that the Constitution sanctions no law imposing such an assessment without a notice to, and a hearing, or an opportunity of hearing, by the owners of the property to be assessed."

This language has been quoted with approval in many cases. (See dissent of Mr. Justice Matthews in Spencer *vs.* Merchant, *supra.*)

In the Ulman Case, in Maryland, already cited, the court said:

> "The entire proceeding, beginning with the act, . . . was purely *ex parte.* No opportunity whatever was given to resist this exaction either by allowing a hearing before the imposition of the tax, or by providing for an appeal to a court of law afterward. The first process served upon the citizen was a peremptory demand for the payment of a burdensome lien—a judgment *in rem* and *in personam*—imposed . . . without summons or notice or warning, and without even an opportunity to appeal. If this be due process of law, the provisions of the Federal and State constitutions and of *Magna Charta* itself are utterly meaningless and vain."

And the judgment holding the ordinance in question in that case to be void for want of provision for notice was here affirmed.

> Mayor *vs.* Ulman, 165 U. S. 719.

It may be claimed here, as was done by counsel in the court below, that nothing Mr. Parsons might have done had notice been given him would have affected the proceeding,

and notice being therefore useless, it was not required. The same argument was urged on the Maryland court. I quote from the syllabus of the reported decision:

> "The right to have notice to appear and be heard before such tax is imposed is an *absolute right*, not to be invaded under any pretext whatever, *and the fact that the tax would have been the same if the property owner had appeared and been heard does not make it legal.*"

It would seem that the affirmance of that decision by this court should foreclose further discussion of the subject.

THE STATUTE ARBITRARY AS TO BENEFITS.

It is fundamental law, endorsed by all authorities, that assessments for local improvements can be justified only upon the theory that the lands upon which they are laid are *specially benefited;* "the enhancement in value being the consideration for the charge"; (147 U. S. 202), and if a law should authorize such assessments to be laid without regard to benefits, it would either take property for the public without compensation, or take property from one person for the benefit of another, and in either aspect it would be unconstitutional.

Stuart *vs.* Palmer, 74 N. Y. 189.
Railroad *vs.* City of Decatur, 147 U. S. 198.
Dyar *vs.* Farmington, 70 Me. 527.
Allman *vs.* D. C., above cited.
State *vs.* Cunningham, 29 Minn. 62.
Johnson *vs.* City, 40 Wis. 315.
Wewell *vs.* City, 45 Ohio St. 424.
Schumacker *vs.* Toberman, 56 Cal. 510.

By special benefits is not meant the usual advantages to the public derived from an improvement, but benefits which exceed the general benefits to the public, and which are

present and accrue immediately from the construction of the work.

> Mittell *vs.* City, 9 Ill. App. 534.
> Railroad Co. *vs.* City, 37 N. J. L. 330.
> The Street Extension Cases, *supra.*

And the assessment must not only be on the basis of benefits to the land assessed, but strictly in proportion to such benefits.

> "It is well settled that the property to be benefited may be assessed only in proportion to the benefits received. This rule has received the sanction of the courts too long to be disturbed."
>
> White *vs.* Saginaw, 67 Mich. 40.

The usual method of arriving at the benefits conferred by an improvement is to have the land and the work viewed by a duly authorized commission, who can make a fair estimate of the gain to the land owner. The question of benefits is necessarily a question of fact. It is not contended that the legislature has not the power to investigate the question for itself with reference to a certain improvement and decide it. Undoubtedly the legislature may do this. But this was not done in the case of the statute here under discussion, and we submit that if it had been done when the act was passed, in 1873, such a decision could not be held applicable to improvements made twenty years later, when the prices of labor and of material, as well as other conditions, have changed.

It is sometimes said—doubtless it will be claimed here—that the mere statement by the legislature of the amount or rate of assessment to be levied is presumptive evidence that the question of benefits was considered, and is conclusive of the fact that the property assessed is benefited to the extent of the assessment.

But, evidently, this can be so only when the legislature

had in mind *a certain specified improvement* under *ascertained conditions*. Every case cited on the point shows this fact. The case of Spencer *vs.* Merchant, so much relied on by the defendants, shows it. But, in our case, the law imposes the same rate of $1.25 per foot, whether a 12-inch or a 6-inch water main be laid; whether it is made of iron or terra cotta; whether it is put down before a row of city houses for immediate use by them, or in suburban fields and farms, with an eye to the dim future. In the last-mentioned instance—and such actually often occur in the District—there is absolutely no benefit to the land. The owner cannot use the water main, and does not want it.

Also, many mains are laid in territory where lateral connections for drawing off the water are not contemplated, and no provision is made for them, so that it is impossible for the abutting land owner to use the water, even if he would. Not only this, but in the larger mains, such as the 48-inch, lateral taps are not allowed under any circumstances, so that the citizen may be compelled to pay for a main which he is not permitted to benefit by. It may be claimed that the District will not take advantage of its citizens in this manner; but this would be only forbearance on its part, and does not answer the objection to a law which allows such an injustice.

When these things are borne in mind it cannot be believed that either the Legislative Assembly, in 1873, or Congress, in 1894, considered the question of benefits, or that that question is settled by the mere insertion in the law of an arbitrary rate of assessment.

> See Cooley on Taxation, pp. 459, 460, 489 and 493 *et seq.*

When we consider that, under the law in question, the citizens whose lands abut on a 6-inch water main, costing the District 90 cents a foot (Rec. 5), are compelled to pay for it $2.50 a foot, there can be little chance of error in call-

ing this "a grossly and palpably unjust and oppressive assessment."

> See Mayor *vs.* Johns Hopkins Hosp., 56 Md. 1 (the dissenting opinion in which was afterward accepted by the court in 72 Md. 587).

In the case of Craighill et al. *vs.* Van Riswick, 8 App. D. C. 185, the decision against certain special assessments was partly based on the ground that the law in question allowed the United States the benefit of a very profitable speculation; that the Government might receive $1,800,000 in return for an outlay of $1,200,000, and the court said:

> "Such a result would be shocking to our sense of natural justice, to all our ideas of constitutional guaranty, and to our whole theory of governmental propriety."

If a profit from the citizen to the Government of fifty per cent. is shocking to one's sense of justice, how much more so the profit realized by the District from its water mains—a profit, often reaching, as has been shown, to nearly two hundred per cent.

If this law can be sustained, no bounds can be set to legislative avarice. Such power in the legislature has been styled "an unlimited power to plunder the citizen."

> Cooley on Taxation, p. 68.
>
> City of Bloomington *vs.* Railroad, 134 Ill. 460.

If special assessments stand for their validity upon the doctrine of special benefits (147 U. S. 198) what justification can be found for a proceeding which declares under authority of a statute twenty years old, *and without inquiry or investigation by the legislature or otherwise* that all lands shall bear precisely the same proportionate charge?

> "But whether such improvement does or does not benefit it (the property) is essentially a judicial ques-

tion upon which the property owner is entitled to notice and a hearing."

Elliott on Roads and Streets, p. 397.
Barber Co. *vs.* Edgerton, 125 Ind. 465.
Ulman *vs.* Mayor, 72 Md. 587.

The Court of Appeals on this proposition justified its rulings by the decision of this court in Spencer *vs.* Merchant, 125 U. S. We still think that case should not control this for three reasons.

First. It was a case of a special tax on certain specified lots of land, benefited by a certain improvement, and not a question under a general assessment law.

Second. The improvement had been made, its cost ascertained, and the benefits to property passed upon, so that the legislature was not proceeding blindly to fix an arbitrary tax.

Third. Opportunity was actually given the property owner to be heard as to the apportionment of the tax among the lots benefited—that is, as to how much he should pay.

Under the statute in the case at bar, the owner is not to be heard at all on any question.

That case (Spencer *vs.* Merchant) is cited and construed in Palmer *vs.* McMahon, 133 U. S. 660, where the court says:

> "The power to tax belongs exclusively to the legislative branch of the Government, and *when the law provides for a mode of confirming or contesting the charge imposed, with such notice to the person as is appropriate to the nature of the case,* the assessment can not be said to deprive the owner of his property without due process of law."

No method is provided in the statutes in question here for contesting the charge imposed.

II.

The Assessment was a Taking of Private Property for Public Use Without Just Compensation.

As to the cost of the work. The statute of the District of Columbia under which the main in question was laid is an anomaly even among special assessment laws. In no other jurisdiction have we been able to discover a law which provides for an assessment without any reference to the cost of the improvement; hence, authority upon the direct point that nothing more than the actual cost can be assessed against the property owner, is difficult to find. What there is, however, when taken in connection with the obvious reason of the rule is conclusive.

The assessment for a local improvement must be limited to the cost.

> Cooley on Taxation, p. 462.
> Schenely *vs.* The Commonwealth, 36 Pa. St. 29–59.

"The assessment should be for no more than the fair and reasonable cost of the work."

> 25 Ency. of Law, 553.

(In the case at bar the cost was $1.50 per foot and the assessment $2.50 per foot.)

It should appear in the Record that the amounts assessed are no more than the value of the improvements.

> White *vs.* Saginaw, 67 Mich. 41.

And see the authorities collated in note to *Re Madeira Irrigation Dist., 14 L. R. An. 755.*

Any other doctrine will justify confiscation.

As suggested above, if one dollar per foot over and above the cost can be sanctioned, why not any amount?

As to the Assessment Being in Part for Public Purposes.

Assessments under the law, as made up of Secs. 199, 200, 201, 202, and 203, R. S. D. C., are unconstitutional and void, not only for the reasons given above as applicable to the Act of 1873, but because the law under which they are imposed provides for the levy on private property of a special assessment, part of which is to be devoted to the public use. Section 203 makes the fund available, not only for laying the mains, but for maintaining proper machinery and fixtures for distributing the water to the public.

> "When the work appears from the ordinance to be for the public convenience and benefit, a special assessment on abutting property cannot be maintained."
>
> City *vs.* Hughes, 1 Gill & J. (Md.) 480.
> Hammet *vs.* City, 65 Pa. 155.
> Also 48 Md. 198.
> 69 Pa. St. 352.

Under the statutes in question here a large part of the profits from these special assessments is employed for *public uses.*

The various purposes to which this surplus is applied is shown by the "Water Department" section of the annual appropriation acts of Congress for the District setting aside sums "to carry on the operation of the Water Department, and to be paid wholly from its revenues, namely."

Among the items which are thus paid for from these revenues, as shown by the Act of March 2, 1895, are superintendent of distribution branch, 5 clerks, 7 inspectors, messenger, draftsmen, foreman, timekeeper, tapper, assistant tapper, engineers, plumbers, property keeper, hostler, calker, etc.; in all $37,034; contingent expenses, including books, forage, etc., $2,500; interest, etc., $44,610; interest on Soldiers' Home reservoir, $2,581.66; sinking fund on reservoir debt, $5,745.02; interest on one-half cost of 48-inch main and

Fourteenth street mains, $7,812.09; and whatever may be available, after providing for the above, for the extension of the system of water distribution, including necessary lands buildings, machinery, mains and appurtenance.

Now as a matter of reason and justice, why should private citizens be compelled by means of exorbitant special assessments, to contribute to the maintenance of *public* works? These public improvements and expenses should be paid for from the general revenues of the municipality, toward which each and every citizen gives his share, or from the rentals exacted from those who use the water.

The Commissioners Without Jurisdiction.

The Act of 1873 provided that the "Board of Public Works shall determine whether water mains shall be laid, *on petition therefor.*"

There was no petition here.

The Act of Congress of June 17, 1890, gave jurisdiction to the Commissioners to lay water mains whenever in their opinion it was necessary for the public safety, comfort and health.

There was no such finding by the Commissioners; the nearest approach to it being the opinion of the Chief of the Fire Department that the main is necessary to public safety (Rec. 4.)

It is submitted that the judgment below should be reversed, and the assessment quashed.

ARTHUR A. BIRNEY,
Attorney for Plaintiff in Error.

No. 177.

Brief of Thomas & Duvall for D. C.

Filed Dec. 15, 1897.

SUPREME COURT OF THE UNITED STATES.

October Term, 1897.

No. 177.

HOSMER B. PARSONS, PLAINTIFF IN ERROR,

vs.

DISTRICT OF COLUMBIA ET AL.

Error to the Court of Appeals of the District of Columbia.

SIDNEY T. THOMAS,
ANDREW B. DUVALL,
Attorneys for the District of Columbia,
Defendant in Error.

HARTMAN & CADICK, PRS.

SUPREME COURT OF THE UNITED STATES.

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HOSMER B. PARSONS, PLAINTIFF IN ERROR,

vs.

DISTRICT OF COLUMBIA ET AL.

Error to the Court of Appeals of the District of Columbia.

BRIEF FOR THE DISTRICT OF COLUMBIA.

This was a proceeding in *certiorari* to quash the assessment of a tax for laying a water-main in Military Road in the District of Columbia, adjacent to the property of the plaintiff in error.

The case was heard on the petition and return of the respondents, and, a motion for judgment being overruled by the Supreme Court of the District of Columbia, the petitioner took an appeal to the court below, and the judgment of the Supreme Court of the District being there affirmed, he removed the case by writ of error to this court.

POINTS AND AUTHORITIES.

I.

THE ACT OF THE LATE LEGISLATIVE ASSEMBLY OF THE DISTRICT OF COLUMBIA, APPROVED JUNE 23, 1873, UNDER WHICH THE ASSESSMENT IN QUESTION WAS LEVIED, IS NOT UNCONSTITUTIONAL BECAUSE IT DOES NOT PROVIDE FOR PRELIMINARY NOTICE TO PROPERTY OWNERS OF INTENTION TO LAY WATER-MAINS.

Water-main taxes in the District of Columbia are imposed in respect of improvements, the cost of which is fixed by legislative enactment. There is no inquiry into the weight of evidence, either as to the propriety of the laying of the mains, the character of materials, or their cost. Such taxes are distinguished from taxes imposed upon property according to its value. In the former case no notice is required. In the latter it is.

This distinction is recognized in Hagar *vs.* Reclamation District (111 U. S., 701), which involved the validity of swamp land assessments. By an act of the Legislature of California, passed in 1868, a general system was established for reclaiming swamp and overflowed salt marsh and tide lands in the State and fitting them for cultivation. Among other objections to the assessments was one that the owners of land were not notified, and had no opportunity to question the validity or amount of the tax, either before its amount was determined or in subsequent proceedings for its collection. Attention is called to the language of Mr. Justice Field in giving the judgment of this Court in that case, at page 708–9—

"The appellant contends that this fundamental principle was violated in the assessment of his property, inasmuch as it was made without notice to him, or without his having been afforded any opportunity to be heard respecting it, the law authorizing it containing no provision for such notice or hearing. His contention is that notice and opportunity to be

heard are essential to render any proceeding due process of law which may lead to the deprivation of life, liberty or property. Undoubtedly where life and liberty are involved due process requires that there be a regular course of judicial proceedings, which imply that the party to be affected shall have notice and an opportunity to be heard; so, also, where title or possession of property is involved. But when the taking of property is in the enforcement of a tax the proceeding is necessarily less formal, and whether notice to him is at all necessary may depend upon the character of the tax and the manner in which its amount is determinable. The necessity of revenue for the support of the government does not admit of the delay attendant upon proceedings before a court of justice, and they are not required for the enforcement of taxes or assessments."

Section 203 of the Revised Statutes of the District provides as follows: "The water tax authorized to be levied and collected by the provisions of the four preceding sections shall constitute a fund to be used exclusively to defray the cost of distribution of the water, including all necessary fixtures and machines connected with such distribution."

The preceding section, 199, authorizes a specific charge on particular property, which is *determined by the Legislature* to be benefited by reason of the laying of the water-main. Notice to property owners of the laying of water-mains is therefore of no possible service to them. The matter to be determined is a plain mathematical calculation.

Where no discretion is left to municipal officers, notice is not essential to the validity of the levy of water-main tax assessments.

25 Am. & Eng. Ency. 546, note 1 and cases.

Whenever a local improvement is authorized, it is for the Legislature to prescribe the way in which and the means by which its costs shall be raised, whether by laying general

taxes or by laying the burden upon the land especially benefited by the expenditure.

Mobile *vs.* Kimball, 106 U. S., 691–704.

Louisiana *vs.* Pillsbury, 105 U. S., 278–295.

The Legislature has the power to determine by ordinance imposing the tax what lands which may be benefited by the improvement are, in fact, benefited ; and if it does, its determination is conclusive upon the owners, and the owners have no right to be heard upon the question whether their lands are benefited or not.

Spencer *vs.* Merchant, 125 U. S., 345–353.

The Legislature, in the exercise of its power of taxation, has the right to assess the whole or a part of the cost of a pubilc improvement upon the owners of land benefited by it; and the determination of the assessment district which should be taxed for local improvements is within the province of the legislative discretion

It is not pretended in this case that the water-main in question was not necessary and proper to be laid, nor that the property of the petitioner was not benefited by the laying of it. His principal objection, after having received the benefit of the improvement, is that he was not notified anterior to the work, and that the assessment was made without regard to the cost of the improvement, and that it was not authenticated by the Water Registrar, as provided by the act of the District Assembly of June 23, 1873.

II.

THE ASSESSMENT COMPLAINED OF WAS NOT A TAKING OF PRIVATE PROPERTY WITHOUT JUST COMPENSATION.

The water-main tax assessment in question was not levied in the exercise of the power of eminent domain, but in the exercise of the taxing power, and notice was not required.

Baltimore *vs.* Johns Hopkins Hospital, 56 Md., 1.

Alberger *vs.* Baltimore, 65 Md., 1.

Spencer *vs.* Merchant, 125 U. S., 355.

The cost of laying water-mains being fixed by statute at one dollar and twenty-five cents per front foot against abutting property, the entire matter was ministerial.

It is claimed by the appellee that the water-main tax in question is void because laid without regard to the cost of the work.

In Davidson *vs.* New Orleans (96 U. S., 99) the points were made that the Legislature had no right to organize a private corporation to do the work of public improvement, and by statute to fix the price at which the work should be done; that the price so fixed was exorbitant, and that there might be a surplus collected under the assessment beyond what was needed for the work, which must in that event go into the city treasury. This court overruled these contentions and affirmed the judgment.

The laying of the particular main which was the occasion for the tax in controversy was merely an extension of the *water system*. It is not the actual expense of laying a main with which the abutting property is to be charged. The laying of the particular main was the point in time when the appellant's property received the benefit of the water system.

In Leominster *vs.* Conant (130 Mass., 394), which was the case of a sewer assessment, this question was disposed of by Devens, justice, at page 386, as follows:

"The sum assessed to those whose estates abutted on the sewer *was more than the cost of this particular sewer*, and the assessment was made under the (general) system adopted. It was not for a proportional part of the sewer which had been constructed, but according to the *uniform rate which had been determined upon for the sewerage territory.*"

It was contended that this could not be done, but the Court said:

"Whatever system it (the town) might lawfully adopt, the tenant's estate was subject to."

In Taylor *vs.* McFadden (84 Iowa, 262) it was held that an ordinance providing for the establishment of a system of water works and appropriating a sum named for sinking an artesian well was not invalid because the system may prove a failure nor because the cost thereof could not be known in advance.

In many of the States legislation has provided for irrigation and drainage systems and for local assessments and taxes, similar in principle to the one now under consideration, to defray the cost, maintenance and keeping in repair such works. The Illinois statute for the maintenance and keeping in repair of drains, pumping works, etc., for drainage purposes by special assessments was reviewed and held legal.

Hyde Park *vs.* Spencer, 118 Ill., 446.

In Drexel *vs.* Lake (127 Ill., 54) the court said: "The pumping works being, as we have already held, a part of sewer, it is difficult to see how they can be regarded as separate and independent improvements. The pumping works and sewers are no more divisible than are the several parts and sections of the sewer itself. True, the property in which both the storm and sewer drains discharge directly into the main sewer may be said to derive no benefit from the pumping works, but it is equally true that property adjacent to certain portions of the sewer itself will derive no benefit from the construction of other portions. It may well be urged that property situated near the mouth of the sewer will be in no degree benefited by the construction of portions situated two or three miles further south. This, however, is no test to determine whether the improvement is single or double."

In Springfield *vs.* Greene (120 Ill., 269) the improvement for which the assessment was levied consisted of the paving of a large number of the streets and alleys of the city, and it was held to be a single improvement. The test there applied was that the streets and alleys to be paved were so similarly situated with respect to the improvement proposed as

to justify treating them as parts of a common enterprise, and therefore a single improvement.

The benefits in the case of water-mains are purely local, as the use of the water must necessarily be mostly restricted to the benefit of the property abutting the street or avenue in which the mains are laid, both for domestic purposes and the extinguishment of fires. The effect of supplying the streets and avenues of the city with water is to enhance the value of dwelling houses thereon, of which the maintenance of the water-mains and the supplying of water are necessarily a continuing expense, and fully justifies the imposition of such taxes.

Allentown *vs.* Henry, 73 Pa. St., 404, 406.

See also Allen *vs.* Drew, 44 Vt., 174, 187, wherein REDFIELD, Justice, in explanation of the principle of assessments for local improvements, says:

"It is not easy to see any distinction between an assessment for building a sewer or a sidewalk and an aqueduct. They are each in a degree a general benefit to the public, and a special benefit to the local property, both in the uses and in the enhanced value of the property. The proprietor may, indeed, leave his house tenantless and his vacant lots unvisited, but the assessment is not for that reason void. Such assessments are justified on the ground that the subject of the tax receives an equivalent."

III.

THE OBJECT OF WATER-MAIN TAXES IN THE DISTRICT OF COLUMBIA IS TO CREATE A FUND TO DEFRAY THE COST OF DISTRIBUTING POTOMAC WATER.

The Washington aqueduct was designed to supply the Government departments and the inhabitants of the cities of Washington and Georgetown with a plentiful supply of wholesome water from the Potomac River at Great Falls. This splendid work, undertaken in 1857, for the public con-

venience, health, and comfort has thus far cost the Government upwards of $4,000,000, exclusive of the so-called "Lydecker tunnel." To meet the growing demands for water it is necessary to lay additional mains each year. To defray the expenses of laying new mains it is necessary to create a fund by the collection of water-main taxes. To provide for the maintenance, management and repair of the plant or system of water distribution it is necessary that water rates or rents be imposed and collected. The laying of mains and the distribution of water, both in point of fact and by legislative declaration, enhances the value of property abutting streets in which the mains are laid to an amount at least equal to the sums property owners are required to pay as water-main taxes.

Our water system was established by Congress by act approved March 3, 1859 (11 Stat., 436). This act was brought forward in the revision and is incorporated in the Revised Statutes of the District, as Chapter VIII, title "Water Service," sections 199, 200, 201, 202 and 203, of which, relating to *water-main taxes*, are as follows:

SEC. 199. A water-tax may be levied and collected on all real property within the limits of the city of Washington which binds or touches on any avenue, street or alley in which a main water-pipe may be laid by the United States or by the District.

SEC. 200. The water-tax shall be as nearly as possible equal and uniform.

SEC. 201. The water-tax may be levied on lots in proportion to their frontage or their area, as may be determined by law, and may be collected in not less than three nor more than five annual installments.

SEC. 202. All such installments after the first shall bear interest at the rate of six per centum per annum, commencing from the date at which the first installment becomes due, but may, at the option of the owner of the property taxed, be paid and discharged in full at any time after the tax has been levied.

SEC. 203. The *water-tax* authorized to be levied and collected by the provisions of the four preceding sections *shall constitute a fund to be used exclusively to defray the cost of distribution of the water, including all necessary fixtures and machines connected with such distribution*..

The Legislative Assembly of the District being empowered by Congress so to do (Sec. 197, R. S. D. C.), by act approved June 23, 1873, authorized the commissioners of the sinking fund to issue certificates to pay for water-mains, etc , and providing for an assessment for water-mains and fire-plugs in Washington and Georgetown, declares:

"SEC. 6. That hereafter, in order to defray the expense of laying water-mains and the erection of fire-plugs, there be, and is hereby, *levied a special tax of one and a quarter cents per square foot on every lot and part of lot which binds in or touches on any avenue, street, or alley in which a main water-pipe may hereafter be laid and fire-plugs erected*, which tax shall be assessed by the water registrar within thirty days after such water-mains and fire-plugs shall have been laid and erected, of which assessments the water registrar shall immediately notify the owner or agent of the property chargeable therewith, setting forth in said notice the number of the square in which is situated the property on which said tax is assessed, and the street, avenue or alley on which it fronts; and the said tax shall be due and payable in four equal installments, the first of which shall be payable within thirty days from the date of the notice, and the other three shall be due and payable annually, one in each year, dating from the time when the first installment became due, and all of the said installments shall bear interest at the rate of six per cent. per annum, commencing from the date of notification of the assessment; but the owner of the property taxed may, at his option, at any time after the assessment, pay the same in full, and if the said tax shall be paid in full within thirty days from the time notice was given of the levying thereof, an abatement of six per cent. shall be allowed on the whole amount of the assessment, *and in no case shall the same lot be*

chargeable with more than one tax for the laying of water-mains and erection of the fire-plug."

Congress, by Act of February 25, 1895, extended the water system to points in the District beyond the limits of Washington and Georgetown.

The act of the Assembly of 1873 was the law, both in regard to the *rate* and the *principle* of assessing water main taxes, until August 11, 1894, when Congress enacted:

"That hereafter assessments levied for laying water-mains in the District of Columbia shall be at the rate of *one dollar and twenty-five cents per linear front foot*, against all lots or land abutting upon the street, road, or alley in which a water-main shall be laid: *Provided*, That corner lots shall be taxed only on their front, with a depth of not exceeding one hundred feet; any excess of the other front over one hundred feet shall be subject to above rate of assessment: *And provided further*, that in all cases now pending where assessments have been regularly made and the installments paid as they become due and payable, and the tax-payer is not in default or in arrears in any manner, and where there has not been paid a sum equal to one dollar and twenty-five cents per linear foot, as estimated above, then only so much shall be collected as will make the whole sum paid equal to one dollar and twenty-five cents per linear foot. But this act is not intended to give any ground of action for the refunding of any sum already paid in excess of one dollar and twenty-five cents per linear foot, nor for relieving any tax-payer who is in arrears for water-main assessments."

It will thus be seen that Congress treated the laying of water-mains as *an entire system* and considered the principle of taxation by *area* as not a fair and equitable one when the *system* was to be extended *outside* the cities of Washington and Georgetown, as the principle of *frontage* would be, and also because the amount necessary to be raised was not so much as in the beginning of the system.

The right to levy special assessments for local improvements in this District has been settled by this Court.

"Congress may authorize Washington City to assess the expense of repairing the streets with a new and different pavement upon the adjacent proprietors of lots."

Willard *vs.* Presbury, 14 Wall, 670.

Whether the particular proprietor has been benefited by public improvements cannot be reviewed by *certiorari* except for errors of law.

People *vs.* Gilom, 126 N. Y., 147.

IV.

THE COMMISSIONERS OF THE DISTRICT OF COLUMBIA HAD JURISDICTION TO LAY THE WATER-MAIN IN QUESTION.

The provisions of the Revised Statutes of the District, that water-mains shall only be laid on the request of certain abutting property owners, was repealed or modified by the act of Congress approved June 17, 1890, which makes it unnecessary as a condition precedent to laying a water-main that abutting property owners shall be consulted as to its advisability, its cost or the benefit of the work. The language of the act is:

"The Commissioners of the District of Columbia shall have the power to lay water-mains and water-pipes and erect fire-plugs and hydrants wherever the same shall be *in their judgment necessary* for the public safety, comfort or health."

The Court below, in Burgdorf *vs.* District (7 app. D. C., 405), construing this provision, says:

"This substituted section of June 17, 1890, as will be observed, does not confer upon the Commissioners any power to make assessments upon abutting property, or to give notice to the property owners of such assessments, but only confers upon them unconditional and unrestricted authority to determine the question of the propriety and necessity of laying water-mains and water-

pipes, and of erecting fire-plugs and hydrants without respect to petitions or applications of property owners. Property owners may petition for such improvements, but such petition is not essential to the exercise of the power or jurisdiction of the Commissioners in directing such improvement, if, *in their judgment*, it be necessary for the public comfort and health that it should be made, and the fact that the improvement has been authorized and directed by the Commissioners must be taken as conclusive of the fact that it was deemed necessary or proper for the public safety, comfort or health."

The water-tax in question was authenticated by the water registrar as required by law. (Rec. 6 and 7.)

The act of Congress of August 11, 1894, changing the principle of assessment from *area* to *frontage*, and imposing a tax of $1.25 per linear foot against abutting property to defray the cost of laying water-mains is conclusive alike of the question of the cost of the work, the value of the improvement and the benefits, as against abutting property.

District *vs.* Burgdorf (*supra*).
Spencer *vs.* Merchant, 125 U. S., 345.

In the case last cited *Mr. Justice Gray*, speaking for this court, at pages 355 and 356, says:

"The Legislature, in the exercise of its power of taxation, has the right to direct the whole or a part of the expense of a public improvement, such as the laying out, grading or repairing of a street, to be assessed upon the owners of lands benefited thereby, and the determination of the territorial district which should be taxed for a local improvement is within the province of legislative discretion. Williard *vs.* Presbrey, 14 Wall., 676; Davidson *vs.* New Orleans, 96 U. S., 97; Mobile County *vs.* Kimball, 102 U. S., 691, 703, 704; Hagar *vs.* Reclamation District, 96 U. S., 701. If the Legislature provides for notice to and hearing of each proprietor, at some stage of the proceedings, upon the question what proportion of the tax shall be assessed upon his land, there is no taking of his property without due process of law. McMillen

vs. Anderson, 95 U. S., 37; Davidson *vs.* New Orleans, and Hagar *vs.* Reclamation District, above cited.

"In the absence of any more specific constitutional restriction than the general prohibition against taking property without due process of law, the Legislature of the State having the power to fix the sum necessary to be levied for the expense of a public improvement, and to order it to be assessed either like other taxes, upon property generally, or only upon the land benefited by the improvement, is authorized to determine both the amount of the whole tax and the class of lands which will receive the benefit, and should therefore bear the burden, although it may, if it sees fit, commit the ascertainment of either or both of these facts to the judgment of the Commissioners."

The description of the parcel of land assessed in this case is sufficient. On page 12 of the Record it is admitted that the description of the land assessed is in the same terms as that contained in the petition (Rec., 2), and that it fronts 698 feet on Military Road.

The main was completed July 20, 1895, and the assessment levied August 10, 1895, or within 30 days after the work of laying the mains was completed.

V.

THE ORIGINAL WATER-MAIN TAX OF A CENT AND A QUARTER A SQUARE FOOT FOR LAYING WATER-MAINS WAS A DELIBERATE LEGISLATIVE JUDGMENT OF THE IMMEDIATE COST OF LAYING MAINS AND THE CONTINGENT EXPENSE OF MAINTAINING AND KEEPING THE SAME IN REPAIR:

The law expressly provides that property once assessed for laying water-mains cannot be again assessed either for laying a new main or keeping an old one in repair. In 1894 it was found, when the *system* was extended to the suburbs, or greater Washington, that the rate of a cent and a quarter a square foot was inequitable and excessive, in view of the benefits conferred, the main very often being laid in highways adjacent to unimproved property; and Congress again con-

sidered the expense of laying water-mains and their maintenance and repair, and *reduced* the water-tax from *a cent and a quarter a square foot* to *one dollar and twenty-five cents per linear foot*, according to frontage. A case of clear legislative discretion, carefully and judiciously exercised in view of the changed condition of affairs.

Whatever view the court may take of the contentions of the appellant, we respectfully insist that since there was no *judgment or discretion* to be exercised by the Commissioners in these cases the writ of *certiorari* does not lie to review the question of the cost, utility or the benefit to abutting property by the laying of water-mains. Especially is this so in a case like the one at bar of a tax imposed in terms by the United States Government as a condition to the use of its water system laid in the streets which are its property.

For the reasons hereinbefore set forth, it is respectfully submitted that the judgment of the court below was right, and should therefore be affirmed.

SIDNEY T. THOMAS,
ANDREW B. DUVALL,
Attorneys for the District of Columbia,
Defendant in Error.

PARSONS *v.* DISTRICT OF COLUMBIA.

ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 177. Submitted December 20, 1897. — Decided April 11, 1898.

Although the matter in dispute in this case is not sufficient to give this court jurisdiction, it plainly appears that the validity of statutes of the United States, and of an authority exercised under the United States was drawn into question in the court below, and is presented for the consideration of this court.

The enactment by Congress that assessments levied for laying water mains in the District of Columbia should be at the rate of $1.25 per linear front foot against all lots or land abutting upon the street, road or alley in which a water main shall be laid, is conclusive alike of the necessity of the work and of its benefit as against abutting property.

The power of Congress to exercise exclusive jurisdiction in all cases within the District includes the power of taxation.

If the assessment for laying such water mains exceeds the cost of the work it is not thereby invalidated.

On October 5, 1895, Hosmer B. Parsons, the plaintiff in error, filed in the Supreme Court of the District of Columbia

his petition against the District of Columbia and John W. Ross, Charles F. Powell and George Truesdell, Commissioners of the District, complaining, as illegal, of a certain charge or special assessment against land belonging to the petitioner, as a water-main tax, or assessment for laying a water main in the street on which said land abuts. The petition avers that the charge or assessment in question was made in accordance with the act of the legislative assembly of the District of Columbia approved June 23, 1873, c. 5, and the acts of Congress approved respectively June 10, 1879, c. 16, 21 Stat. 9; June 17, 1890, c. 428, 26 Stat. 159; and August 11, 1894, c. 253, 28 Stat. 275. The petition alleged the following grounds of objection to the assessment:

1. That the petitioner was not one of the property holders who requested that the work and improvements for which said parcel of land was assessed should be done and made, and that said charge was made against property whose owner had not requested the doing of said work or the making of said improvements.

2. That the petitioner was not consulted as to advisability of making said improvements, and was given no opportunity to be heard upon the questions of cost or utility or benefit of the work, or of the apportionment of the tax, and was not notified of the amount charged until after the work was concluded, and after the assessment had been made and had gone into effect as a lien upon said land, which was not a reasonable time.

3. Said assessment was not made and was not authenticated by any officer or person authorized to make or authenticate the same.

4. The assessment was made without any estimate of the cost of the work to be done, and without regard to the cost of the work or the value of the improvement, and not upon the basis of benefits to the property assessed, and said assessment is in excess of the cost of the work.

5. The assessment was made without authority of law, and the respondents had no jurisdiction or right to make the same.

6. The description of the parcel of land assessed is insufficient.

7. The said tax was not assessed within thirty days after the said water main had been laid and erected.

8. All of the said land assessed does not abut upon the street in which said water main was laid.

The petition proceeded to allege that the said charge remained unpaid, and that the Commissioners were threatening to sell and convey said land in order to pay and satisfy said illegal charge, whereby the petitioner's title to his land was clouded, and that he was thereby injured and has no appeal.

The petitioner prayed that a writ of certiorari should issue, commanding the respondents to certify to the court a copy of each and every record and part of record relating in any manner to the laying of said water main and said assessment, and that, upon the coming in of the return of the respondent, the said charge complained of should be quashed and annulled, etc.

The writ of certiorari was issued and a return made thereto. The principal facts appearing therein are that the petitioner's land was assessed with the sum of $872.50, being at the rate of $1.25 for each linear foot abutting on the street; that the land abutting on the opposite side of the street was charged with an equal sum, making a total assessment of $2.50 per foot; and that the cost of the main was $1.50 per foot.

On January 6, 1896, after a hearing upon the petition and return, the petition was dismissed. An appeal was thereupon taken to the Court of Appeals of the District of Columbia, where, after argument, the judgment of the Supreme Court of the District was, on April 16, 1896, affirmed; and on May 5, 1896, the cause was by a writ of error brought to this court.

The principal enactments of Congress pertaining to the water system of the District of Columbia are found in the Revised Statutes relating to the District in chapter 8, sections 195 to 221.

Thereby the legislative assembly, then in existence, was

authorized to supply the inhabitants of Washington and Georgetown with Potomac water from the aqueduct, mains or pipes laid in the streets and avenues by the United States, and to make all laws and regulations for the proper distribution of the same; to establish a scale of annual rates for the supply and use of the water, and generally to enact such laws as might be necessary to supply the inhabitants of Washington and Georgetown with pure and wholesome water, and to carry into full effect the provisions of said chapter 8 of the Revised Statutes. It is further provided that a water tax may be levied and collected on all real property within the limits of the city of Washington, which binds or touches on any avenue, street or alley in which a main water pipe may be laid by the United States or by the District; that the water tax may be levied on lots in proportion to their frontage or their area, as may be determined by law, and may be collected in not less than three nor more than five annual assessments; and that the water tax so authorized to be levied and collected shall constitute a fund to be used exclusively to defray the cost of distribution of the water, including all necessary fixtures and machines connected with such distribution.

In pursuance of the authority thus delegated, the legislative assembly, by act approved June 23, 1873, provided as follows:

"That hereafter in order to defray the expenses of laying water mains and the erection of fire plugs, there be, and is hereby, levied a special tax of one and a quarter cents per square foot on every lot or part of lot which binds in or touches on any avenue, street or alley in which a main water pipe may hereafter be laid and fire plugs erected, which tax shall be assessed by the water registrar within thirty days after such water mains and fire plugs shall have been laid and erected; of which assessments the water registrar shall immediately notify the owner or agent of the property chargeable therewith, setting forth in said notice the number of the square in which is situated the property on which said tax is assessed, and the street, avenue or alley on which it fronts; and the said tax shall be due and payable in four

equal instalments, the first of which shall be payable within thirty days from the date of the notice," etc.

By the act of March 3, 1863, § 204, Rev. Stat. D. C., it was provided that, "on petition of the owners of the majority of real estate on any square or line of squares in the city of Washington, water pipes may be laid and fire plugs and hydrants erected whenever the same may be requisite and necessary for public convenience, security from fire or for health." But this provision was replaced by the act of June 17, 1890, c. 428, 26 Stat. 159, which enacted that "the Commissioners shall have the power to lay water mains and water pipes and erect fire plugs and hydrants whenever the same shall be, in their judgment, necessary for the public safety, comfort or health."

By the act of August 11, 1894, c. 253, 28 Stat. 275, it was provided "that hereafter assessments levied for laying water mains in the District of Columbia shall be at the rate of one dollar and twenty-five cents per linear front foot against all lots or land abutting upon the street, road or alley in which a water main shall be laid." The defendants in error moved to dismiss the writ of error.

Mr. Arthur A. Birney for plaintiff in error.

Mr. S. T. Thomas and *Mr. A. B. Duvall* for defendants in error.

Mr. Justice Shiras, after stating the case, delivered the opinion of the court.

The defendants in error have moved to dismiss the writ of error, because the sum or value of the matter in dispute is less than five thousand dollars, and because the judgment of the court below does not involve the validity of a statute of the United States or of an authority exercised under the United States.

It is true that the amount or value of the matter in dispute is not sufficient to enable this court to exercise its revisory power

over the judgment of the Court of Appeals, but we think it plainly appears that the validity of statutes of the United States and of an authority exercised under the United States was drawn into question in the court below, and is presented, by the assignment of error, for the consideration of this court.

It is stated in the opinion of the Court of Appeals that the questions raised in that court were three: 1st, whether the act of the legislative assembly of the District of Columbia, approved June 23, 1873, in reference to the construction of water mains, and providing the mode of assessment therefor, and also the act of Congress of August 11, 1894, "to regulate water main assessments in the District of Columbia," are constitutional and valid enactments; 2d, whether in the assessment there was a sufficient description of the appellant's property; 3d, whether there was sufficient notice of the assessment given to the appellant. Those questions are clearly within the terms of the statute authorizing this court to review the final judgments or decrees of the Court of Appeals.

The proposition chiefly urged on our consideration is that, in all cases where proceedings are to be had for the taking of property, or to impose a burden upon it, the statute itself must provide for notice to the property owner; otherwise it is unconstitutional; and that the statutes under which the present proceeding was had did not provide for notice to the owner of land to be assessed, nor give him an opportunity to be heard.

Before we reach a particular examination of the reasoning advanced and of the authorities cited on behalf of the plaintiff in error, certain principles, so well settled by the authorities, Federal and state, and by views expressed by esteemed authors, as to form safe materials from which to reason, may well be briefly adverted to.

In every modern civilized community or state there are some matters of which every citizen and property owner must be indisputably visited with notice. In the eye of the law, he knows that his personal service is due to maintain public order and to protect his country from hostile invasion. He is bound to know that, in view of the protection he and his

property receive, it is his duty to contribute his due share to the establishment and maintenance of stable government. No person, in any country governed by laws, least of all in a country where the laws are passed and administered by legally constituted authorities, can be heard to say that he was ignorant of the fact that such was his duty, and that, if he neglected or failed to make such due contribution, lawful compulsory methods might be resorted to.

So, too, when he elects to become a member of a municipal community, and seeks to enjoy the social benefits thereby afforded, he is supposed to have notice of the necessary obligations he thus incurs. Streets must be graded, paved and lighted. A police force to enforce peace and order must be provided. Particularly, in the line of our present investigation, there is the obvious necessity for a system to supply the inhabitants with a constant and unfailing supply of water, an essential for health, comfort and safety, next in importance to air. He cannot be heard to contend that he is entitled to gratuitously receive such advantages, nor that the laws and ordinances under which they are created and regulated are invalid, unless his individual and personal views have been formally obtained and considered.

On the other hand, it is equally well settled that the exercise of the power to assess and collect the public burdens should not be purely arbitrary and unregulated.

In each case, therefore, where the party, whose property is subjected to the charge of a public burden, challenges the validity of the law under which it was imposed, it becomes the duty of the courts to closely consider the special nature of the tax and legislation complained of.

It is trite to say that general principles announced by courts, which are perfectly sound expressions of the law under the facts of a particular case, may be wholly inapplicable in another and different case; and there is scarcely any department of the law in which it is easier to collect one body of decisions and contrast them with another in apparent conflict, than that which deals with the taxing and police powers.

There is a wide difference between a tax or assessment pre-

scribed by a legislative body, having full authority over the subject, and one imposed by a municipal corporation, acting under a limited and delegated authority. And the difference is still wider between a legislative act making an assessment, and the action of mere functionaries, whose authority is derived from municipal ordinances.

The legislation in question in the present case is that of the Congress of the United States, and must be considered in the light of the conclusion, so often announced by this court, that the United States possess complete jurisdiction, both of a political and municipal nature, over the District of Columbia. *Mattingly* v. *District of Columbia*, 97 U. S. 687; *Gibbons* v. *District of Columbia*, 116 U. S. 404; *Shoemaker* v. *United States*, 147 U. S. 282; *Bauman* v. *Ross*, 167 U. S. 548.

By this legislation a comprehensive system, regulating the supply of water and the erection and maintenance of reservoirs and of water mains, was established, and of this legislation every property owner in the District must be presumed to have notice. And accordingly when by the act of August 11, 1894, Congress enacted that thereafter assessments levied for laying water mains in the District of Columbia should be at the rate of one dollar and twenty-five cents per linear front foot against all lots or land abutting upon the street, road or alley in which a water main shall be laid, such act must be deemed conclusive alike of the question of the necessity of the work, and of the benefits as against abutting property. To open such questions for review by the courts, on the petition of any or every property holder, would create endless confusion. Where the legislature has submitted these questions for inquiry to a commission, or to official persons to be appointed under municipal ordinances or regulations, the inquiry becomes in its nature judicial in such a sense that the property owner is entitled to a hearing, or to notice or an opportunity to be heard.

This distinction was clearly brought out in the noted case of *Stuart* v. *Palmer*, 74 N. Y. 183. There an act of the State of New York empowered a commission composed of three persons to open and pave an avenue, and for that purpose

"to take such land as was requisite, estimate the value thereof and assess the amount on the lands benefited by the opening of the avenue in proportion to the benefits," but which provided for no notice to the property owner; and the Court of Appeals held that notice of the proceeding was essential, and that, accordingly, the proceedings were invalid. Subsequently the legislature passed a validating act, directing a sum equal to so much of the first assessment as had not been paid, with interest, and a proportionate part of the expenses of that assessment, should be assessed upon and apportioned among the lots upon which the former assessment had not been paid. The Court of Appeals sustained the act. 100 N. Y. 585. In delivering the opinion of that court, Judge Finch said:

"The act of 1881 determines absolutely and conclusively the amount of the tax to be raised, and the property to be assessed and upon which it is to be apportioned. Each of these things was within the power of the legislature, whose action cannot be reviewed in the courts upon the ground that it acted unjustly or without appropriate and adequate reason. . . . The legislature may commit the ascertainment of the sum to be raised and of the benefited district to commissioners, but it is not bound to do so, and may settle both questions for itself; and when it does so, its action is necessarily conclusive and beyond review. Here an improvement has been ordered and made, the expense of which might justly have been imposed upon adjacent property benefited by the change. By the act of 1881, the legislature imposes the unpaid portion of the cost and expense, with the interest thereon, upon that portion of the property benefited which has thus far borne none of the burden. In so doing, it necessarily determines two things, viz., the amount to be realized, and the property specially benefited by the expenditure of that amount. The lands might have been benefited by the improvement, and so the legislative determination that they were, and to what amount or proportion of the cost, even if it may have been mistakenly unjust, is not open to our review. The question of special benefit and the property to which it extends is of necessity a question of fact, and

when the legislature determines it in a case within its general power, its decision must of course be final. . . . The precise wrong of which complaint is made appears to be that the land owners now assessed never had opportunity to be heard as to the original apportionment, and find themselves now practically bound by it as between their lots and those of the owners who paid. But that objection becomes a criticism upon the action of the legislature and the process by which it determined the amount to be raised and the property to be assessed. Unless by special permission, that is a hearing never granted in the process of taxation, the legislature determines expenditures and amounts to be raised for their payment, the whole discussion and all questions of prudence and propriety being confided to its jurisdiction. It may err, but the courts cannot review its discretion. In this case, it kept within its power when it fixed, first, the amount to be raised to discharge the improvement debt incurred by its direction; and, second, when it designated the lots and property, which in its judgment, by reason of special benefits, should bear the burden; and having the power, we cannot criticise the reasons or manner of its action."

The case was brought to this court, and, under the style of *Spencer* v. *Merchant*, is reported in 125 U. S. 345. The reasoning of the Court of Appeals was quoted and approved, and its judgment, sustaining the constitutionality of the act in question, was affirmed.

In *Hagar* v. *Reclamation District*, 111 U. S. 701, the distinction between a tax or assessment imposed by a direct exercise of the legislative power, calling for no inquiry into the weight of evidence, nor for anything in the nature of judicial examination, and a tax or assessment imposed upon property according to its value to be ascertained by assessors upon evidence, was pointed out, and it was held that in the former case no notice to the owner is required, but that in the latter case the officers, in estimating the value, act judicially, and notice and an opportunity to be heard are necessary. In giving the opinion of the court it was said by Mr. Justice Field (p. 709): "Of the different kinds of taxes which the

State may impose, there is a vast number of which, from their nature no notice can be given to the taxpayer, nor would notice be of any possible advantage to him, such as poll taxes, license taxes, . . . and generally specific taxes on things, or persons, or occupations. In such cases the legislature, in authorizing the tax, fixes its amount, and that is the end of the matter. If the tax be not paid, the property of the delinquent may be sold, and he be thus deprived of his property. Yet there can be no question that the proceeding is due process of law, as there is no inquiry into the weight of evidence, or other element of a judicial nature, and nothing could be changed by hearing the taxpayer. No right of his is, therefore, invaded."

Similar views have prevailed in most of the state courts, but, instead of citing the cases, we shall content ourselves with referring to the conclusions reached by two text writers of high authority.

In Cooley on Taxation, 447, the following conclusions, from many cases, are stated:

"1. The major part of the cost of a local work is sometimes collected by general tax, while a smaller portion is levied upon the estates specially benefited.

"2. The major part is sometimes assessed on estates benefited, while the general public is taxed a smaller portion in consideration of a smaller participation in the benefits.

"3. The whole cost in other cases is levied on lands in the immediate vicinity of the work.

"In a constitutional point of view, either of these methods is admissible, and one may be sometimes just, and another at other times. In other cases it may be deemed reasonable to make the whole cost a general charge, and levy no special assessment whatever. The question is legislative, and, like all legislative questions, may be decided erroneously; but it is reasonable to expect that, with such latitude of choice, the tax will be more just and equal than it would be were the legislature required to levy it by one inflexible and arbitrary rule."

In Dillon's Municipal Corporations, vol. 2, § 752, 4th ed., the conclusions reached are thus expressed:

"The courts are very generally agreed that the authority to require the property specially benefited to bear the expense of local improvements is a branch of the taxing power, or included within it. . . . Whether the expense of making such improvements shall be paid out of the general treasury, or be assessed upon the abutting property or other property specially benefited, and, if in the latter mode, whether the assessment shall be upon all property found to be benefited, or alone upon the abutters, according to frontage or according to the area of their lots, is according to the present weight of authority considered to be a question of legislative expediency."

It is well settled, by repeated decisions of this court, that the power of Congress to exercise exclusive jurisdiction in all cases whatever within the District includes the power of taxation. *Loughborough* v. *Blake*, 5 Wheat. 317; *Willard* v. *Presbury*, 14 Wall. 676; *Shoemaker* v. *United States*, 147 U. S. 282; *Bauman* v. *Ross*, 167 U. S. 548; *Wilson* v. *Lambert*, 168 U. S. 611.

Our conclusion is that it was competent for Congress to create a general system to store water and furnish it to the inhabitants of the District, and to prescribe the amount of the assessment and the method of its collection; and that the plaintiff in error cannot be heard to complain that he was not notified of the creation of such a system or consulted as to the probable cost thereof. He is presumed to have notice of these general laws regulating such matters.

The power conferred upon the Commissioners was not to make assessments upon abutting properties, nor to give notice to the property owners of such assessments, but to determine the question of the propriety and necessity of laying water mains and water pipes, and of erecting fire plugs and hydrants, and their *bona fide* exercise of such a power cannot be reviewed by the courts.

Another complaint urged is that the assessment exceeded the actual cost of the work, and this is supposed to be shown by the fact that the expense of putting down this particular main was less than the amount raised by the assessment.

But this objection overlooks the fact that the laying of this main was part of the water system, and that the assessment prescribed was not merely to put down the pipes, but to raise a fund to keep the system in efficient repair. The moneys raised beyond the expense of laying the pipe are not paid into the general treasury of the District, but are set aside to maintain and repair the system; and there is no such disproportion between the amount assessed and the actual cost as to show any abuse of legislative power.

A similar objection was disposed of by the Supreme Judicial Court of Massachusetts in the case of *Leominster* v. *Conant*, 139 Mass. 384. In that case the validity of an assessment for a sewer was denied because the amount of the assessment exceeded the cost of the sewer; but the court held that the legislation in question had created a sewer system, and that it was lawful to make assessments by a uniform rate which had been determined upon for the sewerage territory.

In *Hyde Park* v. *Spencer*, 118 Illinois, 446, and other cases, the Supreme Court of Illinois held that a statutory assessment to defray the cost, maintenance and keeping in repair of a drainage system was valid.

The other contentions made on behalf of the plaintiff in error are covered by the observations already made.

The judgment of the Court of Appeals is accordingly

Affirmed.